

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

GRETCHEN S. STUART, M.D., et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	Case No. 1:11-cv-00804
MICHAUX R. KILPATRICK, M.D., PhD., ¹ et)	
al.,)	
)	
Defendants.		

**PLAINTIFF PLANNED PARENTHOOD SOUTH ATLANTIC’S MOTION TO
MODIFY THE PERMANENT INJUNCTION PURSUANT TO RULE 60(b)**

Plaintiff Planned Parenthood South Atlantic (“PPSAT”)² hereby moves, pursuant to Federal Rule of Civil Procedure 60(b), for an order modifying this Court’s Permanent Injunction and Judgment, ECF No. 164. Plaintiff respectfully requests this modification to ensure that the construction of N.C. Gen. Stat. § 90-21.82 articulated in the Court’s Permanent Injunction and Judgment and accompanying summary judgment order, ECF No. 163 at 41, will encompass identical or near-identical provisions of the newly passed North Carolina Session Law 2023-14 (to be codified at N.C. Gen. Stat. §§ 90-21.83A and

¹ Pursuant to Federal Rule of Civil Procedure 25(d), “when a public officer who is a party in an official capacity . . . ceases to hold office,” the “officer’s successor is automatically substituted as a party.” Here, the office of President of the North Carolina Medical Board is, as of the date of the filing of this motion, now held by Michaux R. Kilpatrick, M.D., PhD, who is therefore automatically substituted for Cheryl Walker-McGill, M.D.

² PPSAT is the successor-in-interest of Plaintiff Planned Parenthood Health Systems, Inc., and Plaintiff Planned Parenthood of Central North Carolina. PPSAT was formed by the merger of the two Planned Parenthood Plaintiffs in 2015.

§ 90-21.83C). These provisions, which take effect July 1, 2023, concern whether qualified professionals—as well as physicians—can provide certain statutorily required informed consent information.

Modification under Federal Rule of Civil Procedure 60(b) is justified and supported by the facts and authorities set forth in the accompanying Brief in Support of Plaintiff's Motion to Modify the Permanent Injunction. Plaintiff satisfies the requirements for modification under Rule 60(b)(5) because its motion is timely, meritorious, and not prejudicial to Defendants, and because there has been a significant change in factual circumstances that render prospective application of the Permanent Injunction and Judgment inequitable without modification. Alternatively, Plaintiff satisfies the requirements for modification under Rule 60(b)(6) because its motion sets out extraordinary circumstances that warrant revision of the injunction. For the foregoing reasons, and for the reasons set forth in the accompanying brief, Plaintiff respectfully requests a modification of this Court's Permanent Injunction and Judgment, ECF No. 164, as follows:

That paragraph 2(b) of the Court's 2014 Permanent Injunction and Judgment, which states:

The information required by N.C. Gen. Stat. § 90-21.82 may be provided by a physician or qualified professional, but a physician must be available to ask and answer questions within the statutory timeframe upon request of the patient or the qualified professional.

be revised to read:

The information required by N.C. Gen. Stat. § 90-21.82, § 90-21.83A, and § 90-21.83C may be provided by a physician or qualified professional, but a physician must be available to ask and answer questions within the statutory timeframe upon request of the patient or the qualified professional.

WHEREFORE, Plaintiff respectfully requests that this Court grant its Motion.

Dated: June 13, 2023

Respectfully submitted,

s/ Kristi Graunke

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CERTIFICATE OF SERVICE

I hereby certify that, on June 13, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for all Defendants:

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